IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 12017 of 2004

Between:
Kasam Rangaiah, S/o Ramaiah, aged about 57 years,Occ:Teacher,
R/o 1-8-64/7/4/2/1 & 2, Church Compound, Suryapet, Nalgonda District
..... PETITIONER

AND

1 The Municipal Commissioner, Town Municipality, Suryapet, Nalgonda District
2 Md.Dada Shareef, S/o Late Bandagi,
R/o Kummari Bazaar, Suryapet, Nalgonda District
.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in proceeding to demolish the house bearing No.R/o 1-8-64/7/4/2/1, Church Compound, Suryapet, Nalgonda District, constructed within the boundaries of the land admeasuring 183 Sq.yards in pursuance of provisional order No.H/216/03 dated 9-7-2004 served on
10-7-2004, as highly arbitrary, illegal and in violation of the provisions of Municipalities Act and also in violation of the Article 14 of the Constitution of India and consequently set aside the impugned order by directing the respondent NO.1 not to take any further action in respect of demolition of the house constructed by the petitioner within the boundaries of his land.

Counsel for the Petitioner:MR.J.CH.Y.NARASIMHAM

For the respondent No.1 : S.C. for Municipalities

Counsel for the Respondent No.2: MR.R.TIMMA REDDY

The Court made the following :

O R D E R :

This Writ Petition is filed challenging the impugned order dated 9-07-2004 passed by the first respondent-Municipality to declare the action of the first respondent in proceeding to demolish the house bearing No. 1-8-64/7/4/2/1, Church Compound, Suryapet, Nalgonda District, constructed within the boundaries of the land admeasuring 183 Square yards in pursuance of provisional order No. H/216/03 dated 9-07-2004 served on 10-04-2004 as arbitrary, illegal and in violation of the provisions of Municipalities Act and also in violation of the Article 14 of the Constitution of India and consequently set aside the impugned order by directing the respondent No.1 not to take any further action in respect of demolition of the house constructed by the petitioner within the boundaries of his land.

The case of the petitioner is that he has purchased two plots side by side admeasuring 373 square yards in Sy.No.215 situated at Church Compound, Suryapet through two registered sale deeds bearing No.116/84 and 117/84 dated 31-01-1984 from their respective absolute owners by name Shareer Ali and Babujani and he has obtained sanctioned plan in the year 1995 from the first respondent vide No.H/12/95-96, dated
23-11-1995, but he could not complete the construction due to financial constraints. Further, the petitioner again obtained fresh permission for construction of house vide No.H/251/2001, dated 21-06-2001 and completed the construction with a compound wall around his property and the first respondent-municipality allotted house No.1-8-64/7/4/2, Church Compound, Suryapet, Nalgonda District and since then he has been enjoying the said property without any objection or obstruction whatsoever from any one, including the second respondent. Again, the petitioner has obtained

permission for construction of another two rooms in the suit schedule property of 183 square yards vide permit
No. H/216/03 dated 20-01-2004 for which also the first respondent-municipality allotted House No. 1-8-64/7/4/2/1 and collected tax to a tune of Rs.6,132/- on 19.12.2003.

While the things stood thus, on 28-6-2004 the first respondent-municipality served a show cause notice dated 19-06-2004 on the petitioner asking him to explain within 7 days from the date of receipt of notice, as to why the permission sanctioned vide No. H/216/03 dated 20-01-2004 cannot be cancelled basing on the complaint lodged by the second respondent, who is alleged to have been claiming the said suit property belongs to him. Then the petitioner submitted a representation on 5-7-2004 to the first respondent with a request to furnish the documents submitted by the second respondent so as to enable him to verify and submit proper reply to the show cause notice. The said reply was received and acknowledged by the first respondent on 5-7-2004 itself, but to the utter surprise of the petitioner, the first respondent-municipality issued the impugned order dated 5-7-2004 to the effect that he has not submitted any reply to the earlier show cause notice and therefore the permission sanctioned to him is cancelled as required under Section 344 of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act').

It is the further case of the petitioner that the second respondent in a hurried and hasty manner issued notice under Section 228 (1) of the Act for demolition of his house vide provisional order No.H/216/03 dated 9-7-2004 which was served on him on
10-07-2004 directing to demolish the house within seven days from the date of receipt of notice which is illegal, arbitrary and contrary to the provisions and rules of the Act. Therefore, the action of the first respondent in issuing the impugned order dt.5-7-2004 under Section 228(1) of the Act for demolition of the petition schedule structures without giving any opportunity or conducting proper enquiry and more particularly without giving the reasonable time to the petitioner is in violation of principles of natural justice,

law of equity and provisions of the Act.

Learned counsel for the petitioner contended that the show cause notice dated

19-06-2004 issued by the first respondent-municipality was served on the petitioner on 28-06-2004 asking him to explain within 7 days from the date of receipt of notice for which the petitioner has submitted a representation on 5-7-2004 to the first respondent-municipality and the petitioner has also shown the acknowledgement issued by the Municipality.

On the other hand, the learned Standing Counsel for the first respondent-municipality contended that the petitioner having received the show cause notice on

28-6-2004, did not submit his explanation. It is also contended by the learned Standing Counsel that the petitioner has obtained construction permission in the year 1995 vide Proceedings No.H/122/95 dated 23-11-1995 as per the document No. 117/84 and constructed two rooms in the said plot and recently again has applied for another permission for construction of two rooms along with same document i.e. 117/84 and obtained construction permission from the first respondent-municipality and constructed in another place. He, however, submits that the petitioner has misrepresented and misguided the officials and obtained construction permission.

Since the petitioner is said to have submitted his explanation to the show cause notice, and the impugned order came to be passed without considering the said explanation, both the learned counsel for the petitioner and the learned Standing Counsel for the Municipality, agreed for disposal of the writ petition with the following directions:

The impugned order canceling the permission granted to the petitioner is quashed and set aside. The first respondent-municipality is directed to re-consider the issue in accordance with law after taking into consideration the explanation dated 05-07-2004 submitted by the petitioner to the show cause notice issued by them, and pass appropriate orders thereon, and then take action in accordance therewith. No costs.

_____

ksr/ccm 13-7-2004

Note: Issue C.C. immediately.
B/o
ksr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Municipal Commissioner, Town Municipality, Suryapet, Nalgonda District
2. 2 CCs to the Standing Counsel for the Municipalities.
3. 2 CD copies